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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 484

WESTINGHOUSE BROADCASTING COMPANY, INC.,

Appellant,

vs.

UNITED STATES OF AMERICA, RADIO CORPORATION OF AMERICA and NATIONAL BROADCASTING COMPANY, INC.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JURISDICTIONAL STATEMENT

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JURISDICTIONAL STATEMENT

OPINION BELOW

Westinghouse Broadcasting Company, Inc. (Westinghouse) appeals from a decision of the United States District

Court for the Eastern District of Pennsylvania, filed Ju
27, 1960, denying its motion for leave to intervene. Int
vention was sought to demonstrate that the provisions
the Final Judgment of that Court, entered September
1959, were being violated.* The opinion of the Distr
Court is reported in Trade Regulations Rep., para. 69,7
and 3 Fed. Rules Serv. 2d 24b.61, Case 1, is printed
Appendix A hereto, *infra*, p. A 1, and appears at page
of the Record.

JURISDICTION

On December 4, 1956, the United States commenc
an action against Radio Corporation of America (RC
and National Broadcasting Company, Inc. (NBC) char
ing violation of Section 1 of the Sherman Act (26 St
209, as amended, Title 15 U.S.C., Sec. 1). The compla
(R. 1-9) charged that NBC and RC[redacted] conspired
restrain trade by obtaining television [redacted]ions in five
the eight largest markets in the United States. It furth
alleged that, pursuant to that conspiracy, NBC and RC
had coerced Westinghouse into exchanging its televisi
station in Philadelphia (WPTZ) for NBC's television st
tion in Cleveland by threatening to terminate the NB
affiliation of WPTZ and Westinghouse's Boston stati
and by threatening to withhold NBC affiliation from We
inghouse in Pittsburgh and other markets in which We
inghouse might in the future own stations. That action w
terminated by the entry on September 22, 1959, of the Fi
Judgment which, among other things, required NBC
divest itself of WPTZ, subject to the control of the Cou

*The Final Judgment is reported in Trade Regulations Rep., pa
69,459, is printed in Appendix A hereto at p. A 3, and appea
at page 10 of the Record which has been filed in this Court togeth
with the Jurisdictional Statement.

Being aggrieved by subsequent acts of NBC which it believed violated the Final Judgment, Westinghouse moved on May 9, 1960, to intervene, pursuant to Rules 24(a)(3) and 24(b) of the Federal Rules of Civil Procedure, in order to demonstrate the existence of those violations, after it had been informed by plaintiff, the United States of America, that it would not seek a court determination whether those acts violated the Judgment. Westinghouse's motion was denied on June 27, 1960. The denial of the motion left no further proceeding before the District Court, and Westinghouse and all others whom the decree was designed to protect forever lost the protection provided by the Judgment. Notice of appeal was filed by Westinghouse in the District Court on August 17, 1960.

The jurisdiction of the Supreme Court to entertain this appeal is conferred by Section 2 of the Expediting Act (32 Stat. 823, as amended, 15 U.S.C. Sec. 29).

The following decisions sustain the jurisdiction of the Supreme Court to entertain the appeal:

Sam Fox Publishing Co., Inc. v. *United States*, 362 U. S. 986;

Wometco Television & Theatre Co. v. *United States*, 355 U. S. 40;

Sutphen Estates, Inc. v. *United States*, 342 U. S. 19;

Brotherhood of Railroad Trainmen v. *Baltimore & Ohio R. R.*, 331 U. S. 519;

Allen Calculators, Inc. v. *National Cash Register Co.*, 322 U. S. 137; and

Missouri-Kansas Pipe Line Co. v. *United States*, 312 U. S. 502.

QUESTIONS PRESENTED

1. Since the disposition of WPTZ was under the control of the District Court and the disposition of WPTZ proposed by NBC would adversely affect Westinghouse, did not Westinghouse have the right, under Rule 24(a)(3), to intervene to demonstrate that such disposition would violate the Judgment?

2. Did not the District Court err in holding that it had deprived itself of "jurisdiction to allow the intervention" when it entered the Judgment providing that the parties "and no one else" might apply to the Court for further orders?

3. Did not the District Court abuse its discretion when it held that plaintiff's opposition to intervention by Westinghouse required the Court to refuse to exercise its discretion under Rule 24(b) to permit intervention?

STATEMENT OF FACTS

Westinghouse owns a television station (WBZ-TV) in Boston which has had a network affiliation agreement with NBC since 1949. It also owns television stations in Baltimore, Cleveland, Pittsburgh and San Francisco. In 1954 Westinghouse owned a television station in Philadelphia (WPTZ) which had a network affiliation agreement with NBC.

(a) Exchange of stations between NBC and Westinghouse.

In September 1954, NBC advised Westinghouse that the NBC Board of Directors had decided to own television stations in five of the largest markets and was therefore determined to acquire stations in Philadelphia and Boston or

San Francisco. NBC advised Westinghouse that the NBC affiliation of Westinghouse's Philadelphia station would terminate unless Westinghouse agreed to sell its Philadelphia station to NBC. Westinghouse, therefore, exchanged its Philadelphia station for NBC's station in Cleveland and $3,000,000.

(b) Government's action against RCA and NBC.

In December, 1956, the United States instituted the above-captioned action against RCA and NBC. The complaint alleged that network affiliation was "generally essential to the economic survival of television stations except in the three largest major markets"—New York, Chicago, Los Angeles (R. 4, para. 9). The Government alleged that RCA and NBC were engaged in an unlawful conspiracy to obtain VHF television stations in five of the eight primary markets by the unlawful use of NBC's power to grant or withhold NBC network affiliation (R. 7, paras. 18, 19). The complaint further alleged that RCA and NBC had carried out that conspiracy in part by depriving Westinghouse of its television station in Philadelphia by threatening to refuse to renew NBC affiliation with Westinghouse stations in Boston and Philadelphia, withholding NBC affiliation from the station about to be acquired by Westinghouse in Pittsburgh and threatening to withhold network affiliation from Westinghouse in the future (R. 7, para. 20).

On September 22, 1959, the District Court entered on consent a Final Judgment which enjoined NBC and RCA from coercing or attempting to coerce any person to sell any broadcast station to either defendant by terminating or threatening to terminate, or refusing or threatening to refuse to enter into, an NBC network affiliation agreement with any other television broadcast station controlled by the same person (Section IV(A), p. A6, *infra*). It further enjoined NBC and RCA from acquiring any television

broadcast station in, among other market areas, Boston or San Francisco, except upon prior written notice to the plaintiff. The Government had the right to apply to the District Court for a determination whether the consent of the other party to any proposed acquisition was obtained by acts or conduct of the defendants which constituted either (a) an unreasonable restraint of trade or (b) a violation of the injunction against coercion (Section IV(B), pp. A6-7, *infra*). The Judgment required NBC, on or before December 31, 1962, to dispose of the Philadelphia television and radio stations which it had acquired from Westinghouse. The Government was given, in case the disposition was effected by an exchange, the same right to apply to the District Court for a determination as to the nature of the acts which resulted in the exchange (Section V, pp. A8-9, *infra*).

(c) NBC's attempt to evade the Final Judgment.

Shortly after entry of the Judgment, NBC advised Westinghouse that it intended to exchange the Philadelphia station (which the Judgment required NBC to dispose of) for a station in one of the largest markets in the United States. NBC stated that its first preference was to acquire a television station in Boston; it also expressed interest in Westinghouse's stations in Pittsburgh and San Francisco. Westinghouse recognized that NBC's proposal to acquire a station in Boston threatened Westinghouse with loss of its Boston affiliation with NBC, as had previously been threatened in Philadelphia. Westinghouse sought to protect its Boston station's affiliation with NBC by offering to re-exchange the Cleveland and Philadelphia stations. NBC rejected that suggestion, and Westinghouse expressed its unwillingness to dispose of its Boston, Pittsburgh or San Francisco stations.

Shortly thereafter NBC entered into a "package deal" by which it attained the objectives which the Government had alleged were the purposes of the original illegal conspiracy. In December, 1959, NBC and RKO General, Inc., entered into an "agreement in principle" providing for the exchange of the NBC radio and television stations in Philadelphia (market 4) for the RKO General radio and television stations in Boston (market 6). That exchange was conditioned upon the purchase by RKO General of the NBC radio and television stations in Washington, D. C. (market 11) for $11,500,000. The entire transaction was in turn contingent upon "the simultaneous acquisition by NBC of a television station in a replacement market deemed suitable by NBC". In February, 1960, NBC entered into an agreement to purchase KTVU in San Francisco (market 7) for approximately $7,000,000. That agreement was conditioned upon the sale by NBC of its Washington radio and television station. Thus, all transactions were part of the same bundle.

The consummation of that "package deal" will result in the termination of the Westinghouse NBC affiliation in Boston. Thus, the Philadelphia station, which NBC obtained from Westinghouse in the transaction the Government claimed was unlawful and which the Judgment required NBC to divest, will, upon consummation of the transaction, have been the instrument used by NBC to injure Westinghouse a second time.

(d) Government's failure to enforce the Judgment and Westinghouse's motion to intervene.

On May 6, 1960, counsel for the Government and the defendants appeared before the District Court. The Government advised the Court that "it is more likely that we will not ask for a determination as permitted by the Judgment

than that we will" (R. 32-33). However, the Government, which knew that Westinghouse proposed to move for leave to intervene, stated:

> "Mr. Hollander: I would like to call your attention to Section VIII, which states, 'Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment, and no one else, to apply to this Court at any time,' and that is as far as I will go with it. But just to point out to Your Honor that jurisdiction has not been exhausted and that the government not only would not oppose hearing anyone who wishes to be heard on this subject, but would urge you to exercise your discretion, to hear them if there should be any." (R. 39)

On May 9, 1960, Westinghouse, having been advised by the Government that it did not propose to seek a determination by the District Court as to whether the Judgment had been violated, moved for leave to intervene. Westinghouse sought to show that the proposed "package deal" violated the Judgment.

The Government subsequently shifted its position with respect to Westinghouse's intervention. On June 3, 1960, the Department of Justice filed a memorandum (R. 43) urging the Court to "deny movants leave to intervene as parties". It did not assert that any injury to the public or detriment to the enforcement of the antitrust laws would result if Westinghouse were permitted to intervene.

THE QUESTIONS ARE SUBSTANTIAL

This appeal raises substantial and important questions concerning the interpretation of Rule 24(a)(3), the continuing jurisdiction of a district court over its own decree and the enforcement of decrees.

(a) Intervention as of right under 24(a)(3).

The first question presented by this appeal is the right of Westinghouse to intervene pursuant to Rule 24(a)(3) of the Federal Rules of Civil Procedure, which requires the court to permit intervention,

> "when the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the court . . . ."

The District Court had within its control the disposition of NBC's Philadelphia station (WPTZ), which the Department of Justice alleged had been illegally obtained from Westinghouse. The disposition of that station in exchange for RKO's Boston station will adversely affect Westinghouse by automatically terminating the NBC affiliation of the Westinghouse Boston station. Thus, the very fruit of what the Government alleged was an illegal conspiracy to obtain WPTZ from Westinghouse is being used again to injure Westinghouse.

In *Sutphen Estates, Inc.* v. *United States*, 342 U. S. 19, petitioner was a lessor of theatre properties to a subsidiary of a subsidiary of Warner Bros. Pictures, Inc. The lease was guaranteed by Warner Bros. Under a plan of reorganization pursuant to a decree requiring the separation of Warner Bros. into two independent corporations, one encompassing the production and distribution, and the other the exhibition, portion of the business, the guaranty was to be assumed by the exhibition company only. The Court stated:

> "It is true that this is a case of 'a distribution or other disposition of property which is in the custody or subject to the control or disposition of the court . . .' within the meaning of Rule 24(a)(3)." *Id.* at p. 22

Intervention of right was denied, but only because petitioner was not "adversely affected" by the disposition of the property, there being no showing that the guaranty of the new company was less valuable than Warner's guaranty.

Westinghouse clearly is adversely affected by the proposed transaction. In denying the Westinghouse motion to intervene the District Court disregarded the principles enunciated by the Supreme Court in *Sutphen Estates*.

(b) The Court had not surrendered jurisdiction.

This Court has not passed upon a provision of a judgment reserving the right to the parties "and no one else" to apply to the court for orders with respect to the decree. The District Court held that provision divested it of jurisdiction to entertain a motion by anyone other than the parties. That decision would appear to be contrary to the nature of consent judgments as decrees of the courts, having the same status as litigated decrees. In *United States* v. *Swift & Co.*, 286 U. S. 106, the Supreme Court stated that, even if the decree there in issue had not contained a specific power to modify the decree,

> "power there still would be by force of principles inherent in the jurisdiction of the chancery. A continuing decree of injunction directed to events to come is subject always to adaptations as events may shape the need. . . . The result is all one whether the decree has been entered after litigation or by consent." *Id.* at 114.

If a court has inherent jurisdiction to modify a decree regardless of the terms of the decree, it must retain jurisdiction with respect to the decree for other purposes. One of the general powers it retains is the power to hear applications with respect to enforcement of the decree and the power to permit persons to intervene for that purpose.

The Department of Justice recognized that the District Court retained jurisdiction to permit intervention when it urged that "jurisdiction has not been exhausted" to permit Westinghouse to intervene (R. 39, p. 8, *supra*.). Thus at least one of the consenting parties recognizes that the "and no one else" language was not intended to sterilize the Court's power. The effect of a contrary interpretation would be to nullify Rule 24(a) of the Federal Rules of Civil Procedure which designates situations in which applicants are permitted to intervene as of right.

(c) Plaintiff's position should not have controlled the District Court's discretion.

The antitrust laws are intended, among other things, to protect private individuals who suffer, or would suffer, economic injury by reason of violations. As a result, a private party is permitted to recover treble damages for antitrust violations, Clayton Act, Sec. 4 (38 Stat. 731, 15 U. S. C. Sec. 15). And a private party may use a judgment obtained by the United States in a litigated action as prima facie evidence of violation in bringing such a treble damage action, Clayton Act, Sec. 5 (38 Stat. 731, as amended, 15 U. S. C. Sec. 16). By entering into a consent decree, a defendant avoids the effect of Section 5 of the Clayton Act. Nevertheless, in settling the action, the Government is presumably protecting the interests of the defendant's competitors and others affected. It is consonant with those objectives that parties having such an interest be permitted to intervene to enforce judgments entered upon consent. *Cf. United States* v. *Vehicular Parking, Limited*, 7 F.R.D. 336, 337 (D. Del. 1947).

The issues Westinghouse sought to raise were those available to plaintiff under the Judgment and were therefore common to the issues in the main action, as required by Rule 24(b). The District Court, however, never reached the

question as to whether the public interest or the private interest of Westinghouse would be served by the Court's exercising its discretion to permit Westinghouse to intervene. It held merely that, since plaintiff opposed intervention (which it did after originally acquiescing), the Court would not as a matter of law exercise its discretion to permit intervention.*

In *Allen Calculators, Inc. v. National Cash Register Co.*, 322 U. S. 137, this Court indicated that intervention should be permitted in a case such as this if the Government does not appear to present all the available facts to the court. In that case, however, the denial of intervention was upheld because the United States opposed defendants' proposed acquisition as a violation of the decree there involved and the record in the court below indicated that "the issues were thoroughly explored . . ." (*Id.* at 142). In the instant case nobody presented any facts to the Court. The Government refused to act and, by opposing intervention, effectively blocked any examination by the District Court of the issues as to defendants' compliance with the Judgment.

This Court should give full consideration to the question whether plaintiff's opposition was, in itself, a sufficient basis for the District Court's refusal to exercise its discretion to permit intervention where intervention was the only means by which the District Court could have obtained full disclosure of the facts as to defendants' compliance with the terms of the Court's Judgment.

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*There is precedent for permitting intervention, as a matter of discretion, over objection of the Department of Justice. The Record on Appeal in *United States* v. *Swift*, 286 U. S. 106 (Record pp. 174, 182, 188) shows that, subsequent to the entry of a consent decree, two organizations were permitted to intervene over the objection of the United States. Intervention was permitted even though there was no action pending at the time, the intervention being made solely for the purpose of opposing a rumored application for modification of the consent decree.

CONCLUSION

The questions presented as to the application of Rules 24(a)(3) and 24(b) are of great importance. Antitrust consent decrees, although entered upon consent of the parties without adjudication, are decrees of the court and are continually subject to the control of the court. Aside from the language of Rule 24(a)(3) applicable to the instant situation, there are compelling reasons to permit intervention to enforce decrees if the plaintiff does not appear to present the facts. Without examination of the issues, a court is powerless to enforce its decree, powerless even to know the facts relating to its effectiveness. Whether a court retains continuing jurisdiction over its decree and the extent of a court's power to act independently of the wishes of one of the parties are substantial questions warranting plenary consideration by this Court.

Respectfully submitted,

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Appendix A

Appendix A

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA *v.* RADIO CORPORATION OF AMERICA and NATIONAL BROADCASTING COMPANY, INC.	Civil Action No. 21743

SUR MOTION FOR LEAVE TO INTERVENE

Before Kirkpatrick, *J.*

Westinghouse has moved to intervene, alleging that certain proposed transactions on the part of the defendants would be a violation of the consent decree entered in this case. The decree retains jurisdiction for the purpose of enabling any of the parties to the final judgment, *and no one else,* to apply to this Court for further orders or directions. In view of this provision, this Court has no jurisdiction to allow the intervention sought. To hold otherwise would be to disregard the intentions of the parties when they consented to the decree and asked the approval of this Court.

The Government opposes the motion for intervention and has informed the Court that it has carefully investi-

gated and reviewed all the facts and reached the conclusion that the proposed Boston and San Francisco acquisitions do not violate the decree. In this state of facts, even if I had discretion to allow the intervention, I would not do so. The Government is concerned with the public interest and is satisfied that the conduct which Westinghouse complains of is not against that interest. It would not lead to an orderly administration of justice to allow intervention in this type of anti-trust litigation over the objection of the authorized agency of the United States in charge of enforcing a decree which it has obtained. The movant, if it is aggrieved, must be left to such private remedy as Congress may have provided for it.

The motion is denied.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, Plaintiff, v. RADIO CORPORATION OF AMERICA and NATIONAL BROADCASTING COMPANY, INC., Defendants.	Civil Action No. 21,743

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on December 4, 1956; the defendants having filed their answer to the complaint, denying the substantive allegations thereof; the Supreme Court of the United States having rendered its opinion with respect to the third, fourth and fifth defenses raised by defendants' answer, as reported in UNITED STATES v. RADIO CORPORATION OF AMERICA, *et al.*, 358 U. S. 334 (1959); and plaintiff and the defendants by their respective attorneys having severally consented to the entry of this Final Judgment without trial or finding on any issue of fact herein, without adjudication by this Final Judgment of any issue of law herein, and without this Final Judgment constituting evidence or an admission by either of them in respect to any such issues;

NOW, THEREFORE, before any testimony has been taken, without trial or finding on any issue of fact herein, without adjudication by this Final Judgment of any issue of law

herein, and upon consent of the parties as aforesaid, it is hereby

ORDERED, ADJUDGED AND DECREED, as follows:

I.

The Court has jurisdiction of the subject matter of this action and of the parties hereto. Defendants having agreed, solely in order to permit entry of this Final Judgment, to waive the defense asserted by them that the complaint fails to state a claim upon which relief may be granted, the Court adjudges that the complaint states claims upon which relief may be granted against the defendants under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act, as amended.

II.

As used in this Final Judgment:

(A) "Person" means any individual, partnership, corporation, association or other legal entity;

(B) "NBC" means the defendant National Broadcasting Company, Inc.;

(C) "RCA" means the defendant Radio Corporation of America;

(D) "WRCV-TV" and "WRCV" mean, respectively, the television and the standard broadcast stations presently owned by NBC in Philadelphia;

(E) "NBC network affiliation agreement" means an agreement between NBC and the owner of a television

broadcast station for affiliation of the station with the television network of NBC;

(F) "Broadcast station" means a station licensed by the Federal Communications Commission in the television or standard broadcast band transmitting signals intended to be received by the general public;

(G) "National spot representation" means representation of a television broadcast station (other than such a station owned directly or indirectly by NBC or RCA) in sales by such station of nonnetwork advertising to national advertisers;

(H) "Television network" means an organization which provides interconnection with, and a national program service to, television broadcast stations not owned by such organization and which sells advertising time to national advertisers in connection with such programs; and

(I) "Market area" means a metropolitan area as defined by the United States Bureau of the Budget in its publication dated June 1959 entitled "Standard Metropolitan Statistical Areas"; if new issues of such publication replace the June 1959 issue, the most recent issue shall be used. To determine the population rank of a market area, the population statistics in the most recent issue of "Survey of Buying Power", a publication of the magazine "Sales Management", shall be used. A broadcast station shall be considered to be in a market area if the transmitter of such station is located within a radius of twenty-five miles from the main post office of the principal city in such area.

III.

The provisions of this Final Judgment applicable to either defendant shall apply to such defendant and to each of its subsidiaries, officers, directors, employees, agents, suc-

cessors and assigns, and to all other persons in active concert or participation with either such defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

NBC, and RCA during any period of time when it directly or indirectly controls or has a substantial ownership interest in a television network, are each enjoined and restrained from:

(A) Coercing or attempting to coerce any person to sell or otherwise transfer any ownership interest in any broadcast station to either defendant, or to any person directly or indirectly controlled by either defendant or in which either defendant directly or indirectly has a substantial ownership interest, by terminating or threatening to terminate or refusing or threatening to refuse to enter into, an NBC net work affiliation agreement with any other television broadcast station controlled by the same person or in which such person has a substantial ownership interest;

(B) Acquiring directly or indirectly any substantial ownership interest in any television broadcast station in the market area of New York, Chicago, Los Angeles, Detroit, Boston, San Francisco, or Pittsburgh, unless

(1) defendants shall have given written notice of the proposed acquisition to plaintiff, affording plaintiff opportunity to apply to this Court within thirty days after such notice for a determination by the Court as provided in clause (2) hereof, and

(2) if plaintiff shall have so applied, the Court shall have determined that the consent of the other party to the proposed acquisition was not obtained by acts or conduct of NBC or RCA relating in any way to the

negotiations for the proposed acquisition, which acts or conduct constitute either (a) an unreasonable restraint of trade (as to which issue plaintiff shall have the burden of proof) or (b) a violation of subsection (A) of this Section IV (as to which issue the defendants shall have the burden of proof);

Provided, however, that the shifting of a television broadcast station from one channel of the television broadcast band to another channel in the same market area, when such shifting results from a change in allocations by the Federal Communications Commission, shall not be deemed to be the acquiring of an ownership interest in a television broadcast station within the meaning of this subsection (B); and, *Provided further*, that any party hereto may at any time upon ten days' written notice to the other parties apply to this Court for a modification of the list of the seven market areas specified in this subsection (B), when the list specified, with Philadelphia included, no longer represents the first eight market areas in the United States in terms of population of the respective areas; and

(C) Undertaking the national spot representation of any television broadcast station other than those listed on Exhibit A hereto unless

(1) defendants shall have given written notice of the proposed spot representation to plaintiff, affording plaintiff opportunity to apply to this Court within thirty days after such notice for a determination by the Court as provided in clause (2) hereof, and

(2) if plaintiff shall have so applied, the Court shall have determined that NBC has not coerced the owner of such station to engage NBC for the national spot representation of the station by terminating or threatening to terminate or refusing or threatening to refuse to

enter into, an NBC network affiliation agreement with the station sought to be represented or with any other television broadcast station controlled by such owner or in which such owner has a substantial ownership interest, defendants having the burden of proof.

V.

Defendants are ordered and directed, on or before December 31, 1962, to sell, exchange or otherwise dispose of all right, title and interest in WRCV-TV and WRCV to a person or persons not controlled directly or indirectly by either defendant and in which neither defendant has any substantial ownership interest.

Such disposition, if accomplished by exchange, shall be an exchange for a station or stations not in the Philadelphia market area and such exchange shall not be effected unless

(1) defendants shall have given written notice of the proposed exchange to plaintiff, affording plaintiff opportunity to apply to this Court within thirty days after such notice for a determination by the Court as provided in clause (2) hereof, and

(2) if plaintiff shall have so applied, the Court shall have determined that the consent of the other party to the proposed exchange was not obtained by acts or conduct of NBC or RCA relating in any way to the negotiations for the proposed exchange, which acts or conduct constitute either (a) an unreasonable restraint of trade (as to which issue plaintiff shall have the burden of proof) or (b) a violation of subsection (A) of Section IV of this Final Judgment (as to which issue the defendants shall have the burden of proof).

If such disposition is accomplished otherwise than by exchange, defendants shall give plaintiffs written notice

of such proposed disposition at least thirty days prior to filing with the Federal Communications Commission any application for the Commission's consent to such disposition.

NBC and RCA are prohibited from acquiring any ownership interest in any television broadcast station in the Philadelphia market area until this Final Judgment shall terminate and be of no further force and effect.

NBC and RCA are prohibited, for a period of five years from and after the date of entry of this Final Judgment, from acquiring any ownership interest in any standard broadcast station in the Philadelphia market area. Any such acquisition after five years from the date of entry of this Final Judgment shall be subject to the procedure provided in subsection (B) of Section IV of this Final Judgment for acquisition of television broadcast stations in certain market areas.

VI.

Nothing contained in this Final Judgment shall be construed to require this Court to pass upon any transaction of acquisition or exchange by the defendants or any undertaking by them of national spot representation except to the extent expressly stated in subsection (B) and (C) of Section IV and in Section V of this Final Judgment.

Defendants shall not apply to the Federal Communications Commission for consent to any exchange or acquisition subject to the provisions of subsection (B) of Section IV or of Section V of this Final Judgment until after expiration of the time within which plaintiff may apply to this Court for a determination as provided therein or, if plaintiff so applies, until after such determination shall have been rendered by this Court. In the event of an appeal from any determination rendered by this Court pursuant to subsections (B) or (C) of Section IV or Section V of this Final

Judgment, defendants shall not, during the pendency of such appeal, consummate the exchange or acquisition involved or undertake the national spot representation involved.

VII.

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in Charge of the Antitrust Division, and on reasonable notice to either defendant made to its principal office, be permitted, subject to any legally recognized privilege, (a) reasonable access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Final Judgment; and (b) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding any such matters. Either defendant, upon the written request of the Attorney General or the Assistant Attorney General in Charge of the Antitrust Division, and upon reasonable notice made to its principal office, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment. No information obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VIII.

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment, and no one else, to apply to this Court at any time for such further orders or directions as may be necessary or appropriate in relation to the construction of or carrying out of this Final Judgment, for the modification or termination of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

IX.

This Final Judgment, and each and every provision hereof, shall terminate and be of no further force and effect nine years after the date upon which NBC finally disposes of all right, title and interest in WRCV-TV and WRCV, but in no event earlier than ten years after the date of entry of this Final Judgment.

Dated: September 22, 1959.

WILLIAM H. KIRKPATRICK,
Senior Judge.

We hereby consent to the making and entry of the foregoing Final Judgment:

For the Plaintiff:

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THOMAS E. ERVIN
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ROBERT L. WERNER
Vice President and General
Radio Corporation of A

Attorneys for Defendants.

Exhibit A

KOA-TV, Denver

KSD-TV, St. Louis

WCKT-TV, Miami

WAVE-TV, Louisville

WRGB-TV, Schenectady

KONA-TV, Honolulu